

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION
In Admiralty**

**IN THE MATTER OF NORFOLK
DREDGING COMPANY, AS OWNER
OF BARGE NDC 601, O.N. 1239824,
FOR EXONERATION FROM OR
LIMITATION OF LIABILITY,**

Civil Action No.: 2:21-cv-520

Limitation Plaintiff.

COMPLAINT IN ADMIRALTY

Norfolk Dredging Company (“Norfolk Dredging”), as owner and operator of the Barge NDC 601, O.N. 1239824, (“NDC 601”) in an action for exoneration from or limitation of liability, alleges that:

1. This is a case of admiralty and maritime jurisdiction of the United States of America within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Norfolk Dredging files this claim for exoneration from or limitation of liability in accordance with the Shipowner’s Limitation of Liability Act, 46 U.S.C. § 30501, *et seq.*

2. This Court has original jurisdiction under 28 U.S.C. § 1333. Venue is proper pursuant to Supplemental Rule F(9) of the Federal Rules of Civil Procedure and Local Rule 3(c).

3. At all material times, Norfolk Dredging was and is a Virginia corporation with a principal place of business in Chesapeake, Virginia.

4. From on or about March 7, 2021 through on or about March 20, 2021, NDC 601 was engaged in dredge slurry pumping operations upon the Savannah River in the vicinity of Savannah, Georgia, and upon the navigable waters of the United States (the “Voyage”). During said operations and Voyage, an incident or incidents occurred (“Incident(s)”), as a result of which

certain employee(s), including Harry L. Penick, were allegedly injured. Others may also allege injuries during said operations and Voyage.

5. NDC 601 is a non-self-propelled barge, documented by the United States Coast Guard, O.N. 1239824. It is 192 feet in length, with a beam of 60 feet, and a depth of 12 feet. NDC 601 is 1061 gross tons (GT ITC) and 318 net tons (NT ITC). At all relevant times, Norfolk Dredging was the owner and operator of NDC 601.

6. NDC 601 is not a cargo carrier and there was no freight pending at the end of the Voyage. NDC 601 was not owed any hire at the time of the Incident(s).

7. NDC 601 has not been attached or arrested. Norfolk Dredging has not been served with any lawsuit as a result of the Voyage or Incident.

8. NDC 601 is in Chesapeake, Virginia, and can be found within this District.

9. Subject to an appraisal of NDC 601 and equipment, Norfolk Dredging's interest in the Vessel post-casualty does not exceed Two Million Two Hundred Thousand U.S. Dollars (\$2,200,000.00).

10. Norfolk Dredging herewith deposits with the Court, as security for the benefit of claimants, a stipulation for security in the sum of Two Million Two Hundred Thousand U.S. Dollars (\$2,200,000.00), which amount equals the total value of NDC 601 and hire due at the time of the Incident(s), plus interest at six percent (6%) per annum from the date of said stipulation.

11. Before and at the beginning of the Voyage, and at all times material to any alleged claims, damages, and Incident(s), Norfolk Dredging exercised due diligence to make NDC 601 staunch and seaworthy in all respects, and to properly man, equip, supply, outfit and make safe NDC 601 for its intended purposes. The injuries allegedly sustained by Harry L. Penick and, potentially, others, if any, were occasioned and incurred without the privity or knowledge of

Norfolk Dredging prior to the commencement of the Voyage and at all times during the conduct of NDC 601's operations. Norfolk Dredging, therefore, claims the benefit of the Limitation of Liability Act and the various acts amendatory and supplemental thereto, and in the same proceeding Norfolk Dredging desires to contest its liability and the liability of NDC 601 for any loss or damage arising out of the aforesaid operations and Voyage.

12. The alleged Incident(s) and all losses and damages caused thereby or otherwise incurred during the operations were not due to any fault, negligence, or lack of due care on the part of Norfolk Dredging, nor were the Incident(s), losses or damages occasioned by any unseaworthiness of NDC 601. Rather, the Incident(s) and all losses and damages caused thereby were due solely to and caused solely by causes for which Norfolk Dredging is not liable.

13. Any injury to Harry L. Penick in the Incident occurring on March 20, 2021 was the result of his sole fault and willful misconduct, stemming from his disobedience of direct orders and instructions.

14. Norfolk Dredging contests its liability and the liability of NDC 601 and/or for any injuries, losses and damages occasioned or incurred during its operations and Voyage, including, but not limited to, the Incident occurring on March 20, 2021 in which Harry L. Penick was allegedly injured. Norfolk Dredging has valid defenses thereto on the facts and on the law. Norfolk Dredging hereby claims and reserves the right to contest in this or any other Court any claim of liability against it.

WHEREFORE, Norfolk Dredging Company prays:

1. That this Court enter an order approving the above-described stipulation for security, in the amount of Two Million Two Hundred Thousand U.S. Dollars (\$2,200,000.00), deposited with the Court by Norfolk Dredging as security for the value of NDC 601, and any

pending freight.

2. That this Court issue a notice to all persons asserting claims with respect to which Norfolk Dredging seeks limitation admonishing them to file their respective claims with the Clerk of this Court and to serve on attorneys for Norfolk Dredging a copy thereof on or before a date to be fixed by the Court and answer to this Complaint, unless the claim includes an answer so designated;

3. That this Court issue an injunction restraining and enjoining the filing or prosecution of any and all suits, actions or proceedings already commenced or to be commenced and the commencement and prosecution thereafter of any and all suits, actions, or proceedings of any nature or description in any jurisdiction against Norfolk Dredging as aforesaid or against NDC 601, or against any other property of Norfolk Dredging except in this action, to recover damages for or in respect of any loss, damage, injury, death or destruction done, occasioned or incurred during the operations and Voyage of NDC 601, including but not limited to, the Incident(s) occurring on March 7, 2021 through on or about March 20, 2021;

4. That this Court enter a judgment in favor of Norfolk Dredging exonerating it from any loss, damage, injury or liability for any claims in any way arising out of or resulting from the operations and any injury or casualty relating thereto;

5. If Norfolk Dredging shall be judged liable and if it be found to have any interest remaining in NDC 601 and hire due at the time of the incident, that the liability of Norfolk Dredging be limited to the value of such interest; and

6. That Norfolk Dredging may have such other and further relief that law and justice may require.

NORFOLK DREDGING COMPANY

/s/ Steven M. Stancliff

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